

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0179P**

**Sales & Use Tax**

**For the Calendar Year of 1999**

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**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

II. **Tax Administration** - Interest

**Authority:** IC 6-8.1-10-1

The taxpayer protests the interest assessment.

**STATEMENT OF FACTS**

The negligence penalty and interest were assessed on the underpayment of use tax resulting from a Department audit conducted for the calendar year 1999.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the penalty be waived as business conditions have turned downwards.

The Department points out the error in the audit is material.

45 IAC 15-11-2(b) states, “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

### **FINDING**

The taxpayer's penalty protest is denied.

#### **II. Tax Administration – Interest**

Interest may not be waived according to statute IC 6-8.1-10-1.